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10/822,317	04/10/2004	Charles T. Manfredi	20031204	2625

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EXAMINER	
WON, MICHAEL YOUNG	
ART UNIT	**PAPER NUMBER**
2155	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/822,317	MANFREDI ET AL.	
	Examiner	Art Unit	
	Michael Y. Won	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the application filed April 10, 2004.

2. Claims 1-22 have been examined and are pending with this action.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 21 and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The language of claims 21 and 22 raises questions as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

The applicant(s) claim "a computer product, comprising: computer readable instructions" but does not define within the body of the claim the hardware in which the invention runs. Thus, absent recitation of the server or some other hardware, claim 21 is not limited to a tangible embodiment, instead being sufficiently broad to encompass software, per se.

The examiner encourages applicant to define within the claims the embodied features and limitations on a "storage" computer readable medium such as hard drives, disks, and other hardware elements. An example of a proper format would be "a machine readable code" or "program product"... "encoded on a computer readable storage medium".

The applicant(s) claim "a computer program embodied on a carrier wave" but does not define within the body of the claim the hardware in which the invention runs. Thus, absent recitation of the server or some other hardware, claim 22 is not limited to a tangible embodiment, instead being sufficiently broad to encompass software, per se.

In claim 22, the applicant(s) have provided evidence that the applicant intends the medium to include signals as such that the claim is drawn to a form of energy (carrier wave or other propagation medium). Energy is not one of the four categories of invention and therefore this claim is not statutory. Energy is not a series of steps or acts and thus not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not combination of substances and therefore not a composition of matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-13 and 15-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Lakkapragada et al. (US 7,165,189).

INDEPENDENT:

As per **claim 1**, Lakkapragada teaches a method of qualifying a network comprising the steps of:

defining a network based on applications running on a network (see col.3, lines 14-15: "The invention will be described below in the context of a computer cluster" and lines 27-31: "A computer cluster is a collection of loosely coupled computing nodes that provides a single client view of network services or applications");

acquiring network test data by testing the network in response to defining the network (see col.1, lines 51-53: "launching a test suite on each computing machine in the test system"); and

comparing the network test data to defined limits (see col.7, lines 14-16: "comparison to known values or to known ranges of values").

As per **claim 10**, Lakkapragada teaches a method of performing design qualification comprising the steps of:

defining a network based on applications running on the network (see col.3, lines 14-15: "The invention will be described below in the context of a computer cluster" and lines 27-31: "A computer cluster is a collection of loosely coupled computing nodes that

provides a single client view of network services or applications"), the network including a network design (see col.3, lines 46-48);

testing the network in response to defining the network (see col.1, lines 51-53: "launching a test suite on each computing machine in the test system"); and

determining suitability of the network design to run the applications in response to testing the network (see col.5, lines 9-13: "validate a product as being compatible").

As per **claim 15**, Lakkapragada teaches a method of performing installation qualification comprising the steps of:

defining a network based on applications running on the network (see col.3, lines 14-15: "The invention will be described below in the context of a computer cluster" and lines 27-31: "A computer cluster is a collection of loosely coupled computing nodes that provides a single client view of network services or applications"), the network including components organized in a topology (see col.3, lines 46-48 and col.4, lines 11-13);

performing measurement of the components (see col.14, lines 39-46: "collect information on how well the system of interest is utilized"); and

verifying the topology in response to performing the measurement (see col.4, lines 52-57 and col.5, lines 9-13: "validate a product as being compatible").

As per **claim 18**, Lakkapragada teaches a method of performing operation qualification comprising the steps of:

defining a network based on applications running on the network (see col.3, lines 14-15: "The invention will be described below in the context of a computer cluster" and

lines 27-31: "A computer cluster is a collection of loosely coupled computing nodes that provides a single client view of network services or applications");

generating traffic on the network (see col.4, lines 49-52: "cluster load tests"); and

differentiating between operation of the application and operation of the network in response to generating the traffic on the network (see col.5, lines 1-8: "first perform functional tests and then proceed to load testing... Thereafter fault injection tests" and col.6, line 66-col.7, line 10: "component level load test 802; an application load test 804; a global load test with faults 806").

As per **claim 21**, Lakkapragada teaches a computer product, comprising:

computer readable instructions causing a computer to define a network based on applications running on a network (see col.3, lines 14-15: "The invention will be described below in the context of a computer cluster" and lines 27-31: "A computer cluster is a collection of loosely coupled computing nodes that provides a single client view of network services or applications");

computer readable instructions causing a computer to acquire network test data by testing the network in response to defining the network (see col.1, lines 51-53: "launching a test suite on each computing machine in the test system"); and

computer readable instructions causing a computer to compare the network test data to defined limits (see col.7, lines 14-16: "comparison to known values or to known ranges of values").

As per **claim 22**, Lakkapragada teaches a computer program embodied on a carrier wave, the computer program comprising:

instructions causing a computer to define a network based on applications running on the network (see col.3, lines 14-15: "The invention will be described below in the context of a computer cluster" and lines 27-31: "A computer cluster is a collection of loosely coupled computing nodes that provides a single client view of network services or applications");

instructions causing a computer to acquire network test data by testing the network in response to defining the network (see col.1, lines 51-53: "launching a test suite on each computing machine in the test system"); and

instructions causing a computer to compare the network test data to defined limits (see col.7, lines 14-16: "comparison to known values or to known ranges of values").

DEPENDENT:

As per **claim 2**, which depends on claim 1, Lakkapragada further teaches wherein the step of defining the network includes the step of identifying components in the network supporting the applications (see col.3, lines 14-15 and lines 27-31) .

As per **claim 3**, which depends on claim 1, Lakkapragada further teaches wherein the method of qualifying the network comprises the step of performing a design qualification (see col.3, lines 46-48; col.4, lines 11-13; and col.5, lines 9-13).

As per **claim 4**, which depends on claim 1, Lakkapragada further teaches wherein the method of qualifying the network comprises the step of performing an installation qualification (see col.5, lines 44-50 and col.7, lines 12-16)).

As per **claim 5**, which depends on claim 1, Lakkapragada further teaches wherein the method of qualifying the network comprises the step of performing an operation qualification (see col.7, lines 12-16 and col.14, lines 43-46).

As per **claim 6**, which depends on claim 1, further teaches wherein the step of acquiring network test data by testing the network is performed using network troubleshooting tools (see col.1, line 65- col.2, line 15).

As per **claim 7**, which depends on claim 1, Lakkapragada further teaches wherein the step of acquiring network test data by testing the network is performed automatically (see col.4, lines 16-19 and col.5, lines 31-32).

As per **claim 8**, which depends on claim 1, Lakkapragada further teaches wherein the step of acquiring network test data by testing includes applying synthetic loads to simulate short-duration stresses (see col.3, lines 63-66 and col.9, lines 47-19).

As per **claim 9**, which depends on claim 1, Lakkapragada further teaches wherein the step of acquiring network test data includes generating traffic to simulate short-duration stresses (see col.3, lines 63-66 and col.9, lines 47-19).

As per **claim 11**, which depends on claim 10, Lakkapragada further teaches wherein determining suitability of the network comprises determining if the network is capable of supporting the applications (see col.4, lines 46-49).

As per **claim 12**, which depends on claim 10, Lakkapragada further teaches wherein determining suitability of the network comprises determining if the network is capable of supporting critical dependencies (see col.5, lines 1-8).

As per **claim 13**, which depends on claim 10, Lakkapragada further teaches wherein determining suitability of the network comprises determining if identified components are isolated in the network (see col.5, lines 9-13).

As per **claim 16**, which depends on claim 15, Lakkapragada further teaches wherein the step of performing measurement of the components include measuring characteristics of the components that define performance of the components (see col.4, lines 35-42).

As per **claim 17**, which depends on claim 15, Lakkapragada further teaches wherein the measurement of the components is performed using troubleshooting tools (see claim 6 rejection above).

As per **claim 19**, which depends on claim 18, Lakkapragada further teaches wherein the step of generating the traffic includes generating synthetic stress loads that exercise at least one of the applications (see claim 8 rejection above).

As per **claim 20**, which depends on claim 18, Lakkapragada further teaches wherein the step of generating the traffic includes generating synthetic stress loads that exercise a component on the network (see claim 9 rejection above).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lakkapragada et al. (US 7,165,189) in view of Falkenthros (US 2004/0073662).

As per **claim 14**, which depends on claim 10, although Lakkapragada further teaches of determining suitability of the network, Lakkapragada does not explicitly teach determining if identified components have the appropriate security.

Falkenthros teaches determining if identified components have the appropriate security (see page 2, [0032]: 'plurality of test applications may comprise tests relating to security testing").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Lakkapragada in view of Falkenthros by implementing determining if identified components have the appropriate security. One would be motivated to do so because security is another area of functionality with a network.

Conclusion

6. For the reasons above, claims 1-22 have been rejected and remain pending.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Y. Won whose telephone number is 571-272-3993. The examiner can normally be reached on M-Th: 7AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Won/

Primary Examiner

January 31, 2007